

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MERYL POMPONIO,  
Plaintiff,

v.

BEVERAGES & MORE, INC., et al.,  
Defendants.

Case No. [20-cv-09448-EMC](#)

**ORDER DENYING MOTION TO  
DECLARE PLAINTIFF A VEXATIOUS  
LITIGANT**

Docket Nos. 26, 27

Pending before the Court is Defendants Jason Zhong Wong and Judi Li Chan Wong's motion to declare plaintiff Meryl Pomponio a vexatious litigant, which is joined by Defendants Beverages & More, Inc. and Adlan, LLC. *See* Docket Nos. 26 ("Mot."); 27 ("Joiner Mot."). Although Defendants argue that Plaintiff's complaint is "harassing," they do not ask the Court to dismiss it. *See id.* In fact, Defendants' reply states that "it is clear that Plaintiff lacks standing" and therefore that "Defendants *intend to file* a motion to dismiss on that basis *as soon as possible*." *See* Docket No. 34 ("Reply") at 7 (emphasis added).

Defendants' motion to declare Plaintiff a vexatious litigant is **DENIED** because it is premature. Declaring Plaintiff a vexatious litigant serves no purpose unless and until Defendants successfully move to dismiss Plaintiff's complaint. *See Brooke v. Grand Hyatt SF LLC*, No. 19-CV-07630-MMC, 2020 WL 2084879, at \*2 (N.D. Cal. Apr. 30, 2020) ("[A]lthough the Court will dismiss the instant action, the Court, as noted, will afford plaintiff leave to amend, and, consequently, it is, at best, premature to determine at this time whether the instant action is

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frivolous or harassing.”). Accordingly, Defendants may refile this motion *if* this Court dismisses Plaintiff’s complaint in its entirety.

This order disposes of Docket Nos. 26 and 27.

**IT IS SO ORDERED.**

Dated: September 2, 2021



EDWARD M. CHEN  
United States District Judge